

Contract # 069089

STATE OF UTAH CONTRACT

1. **CONTRACTING PARTIES:** This contract is between the following agency of the State of Utah:
Department of Transportation Agency Code: 810 Traffic Management, Division referred to as (STATE), and the following CONTRACTOR:

SL Systems Technology, Inc.
Name

11540 Wyndcastle Drive
Address

Sandy UT 84092-7113
City State Zip

Contact Person Scott B. Lindgren Phone (801)-576-9302 Email: slinggren@sisna.com
Federal Tax ID# 84-1404773 Vendor # 47826C Commodity Code # 20867000000

LEGAL STATUS CONTRACTOR

☐ Sole Proprietor
☐ Non-Profit Corporation
☒ For-Profit Corporation
☐ Partnership
☐ Government Agency

2. **GENERAL PURPOSE OF CONTRACT:** The general purpose of this contract is to provide:

Assistance on the ePM STIP and Program Management Module, using Oracle application and development tools. The Program Management module of ePM will be upgraded and enhanced to more accurately model UDOT's current business practices, including the electronic generation of the State Transportation Improvement Plan (STIP).

3. **PROCUREMENT:** This contract is entered into as a result of the procurement process on **RX# 66000000036, FY05 JG6021.**

4. **CONTRACT PERIOD:** Effective date **19 December 2005** Termination date **30 November 2007** unless terminated early or extended in accordance with the terms and conditions of this contract. (1) one year renewal options.

5. **CONTRACT COSTS:** CONTRACTOR will be paid a maximum of **\$400,000.00** for costs authorized by this contract.

6. **ATTACHMENT A:** Division of Purchasing's Standard Terms and Conditions
ATTACHMENT B: Scope of Work & Pricing
ATTACHMENT C: Special Terms and Conditions
Any conflicts between Attachment A and other Attachments will be resolved in favor of Attachment A.

7. **DOCUMENTS INCORPORATED INTO THIS CONTRACT BY REFERENCE BUT NOT ATTACHED:**
a. All other governmental laws, regulations, or actions applicable to the goods and/or services authorized by this contract.
b. Utah State Procurement Code, Procurement Rules, and CONTRACTOR'S response to Bid #JG6021 dated 10/25/05.

IN WITNESS WHEREOF, the parties sign and cause this contract to be executed.

CONTRACTOR

Contractor's signature

Date

Scott B. Lindgren, CEO/President

Type or Print Name and Title

STATE

Kelvin G. Thacker, Procurement Services Manager Date

Director, Division of Purchasing

Date

CONTRACT RECEIVED AND

PROCESSED BY
DIVISION OF FINANCE

Director, Division of Finance

Date

JAN - 6 2006

JAN 03 2006

Denice McCarthy
Agency Contact Person

(801) 965- 4761
Telephone Number

(801) 965-4073
Fax Number

dmccarthy@utah.gov
Email Address

(Revision 08/26/2003)

REC'D JAN 11 2006

ATTACHMENT A: STATE OF UTAH STANDARD TERMS AND CONDITIONS

1. **AUTHORITY:** Provisions of this contract are pursuant to the authority set forth in 63-56, Utah Code Annotated, 1953, as amended, Utah State Procurement Rules (Utah Administrative Code Section R33), and related statutes which permit the State to purchase certain specified services, and other approved purchases for the State.
2. **CONTRACT JURISDICTION, CHOICE OF LAW, AND VENUE:** The provisions of this contract shall be governed by the laws of the State of Utah. The parties will submit to the jurisdiction of the courts of the State of Utah for any dispute arising out of this Contract or the breach thereof. Venue shall be in Salt Lake City, in the Third Judicial District Court for Salt Lake County.
3. **LAWS AND REGULATIONS:** Any and all supplies, services and equipment furnished will comply fully with all applicable Federal and State laws and regulations.
4. **RECORDS ADMINISTRATION:** The Contractor shall maintain, or supervise the maintenance of all records necessary to properly account for the payments made to the Contractor for costs authorized by this contract. These records shall be retained by the Contractor for at least four years after the contract terminates, or until all audits initiated within the four years, have been completed, whichever is later. The Contractor agrees to allow State and Federal auditors, and State Agency Staff, access to all the records to this contract, for audit and inspection, and monitoring of services. Such access will be during normal business hours, or by appointment.
5. **CONFLICT OF INTEREST:** Contractor represents that none of its officers or employees are officers or employees of the State of Utah, unless disclosure has been made in accordance with 67-16-8, Utah Code Annotated, 1953, as amended.
6. **CONTRACTOR, AN INDEPENDENT CONTRACTOR:** The Contractor shall be an independent contractor, and as such, shall have no authorization, express or implied, to bind the State to any agreements, settlements, liability, or understanding whatsoever, and agrees not to perform any acts as agent for the State, except as herein expressly set forth. Compensation stated herein shall be the total amount payable to the Contractor by the State. The Contractor shall be responsible for the payment of all income tax and social security amounts due as a result of payments received from the State for these contract services. Persons employed by the State and acting under the direction of the State shall not be deemed to be employees or agents of the Contractor.
7. **INDEMNITY CLAUSE:** The Contractor agrees to indemnify, save harmless, and release the State OF UTAH, and all its officers, agents, volunteers, and employees from and against any and all loss, damages, injury, liability, suits, and proceedings arising out of the performance of this contract which are caused in whole or in part by the negligence of the Contractor's officers, agents, volunteers, or employees, but not for claims arising from the State's sole negligence.
8. **EQUAL OPPORTUNITY CLAUSE:** The Contractor agrees to abide by the provisions of Title VI and VII of the Civil Rights Act of 1964 (42USC 2000e) which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services, on the basis of race, religion, color, or national origin; and further agrees to abide by Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; 45 CFR 90 which prohibits discrimination on the basis of age; and Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disabilities. Also, the Contractor agrees to abide by Utah's Executive Order, dated March 17, 1993, which prohibits sexual harassment in the work place.
9. **SEPARABILITY CLAUSE:** A declaration by any court, or any other binding legal source, that any provision of this contract is illegal and void shall not affect the legality and enforceability of any other provision of this contract, unless the provisions are mutually dependent.
10. **RENEGOTIATION OR MODIFICATIONS:** This contract may be amended, modified, or supplemented only by written amendment to the contract, executed by the same persons or by persons holding the same position as persons who signed the original agreement on behalf of the parties hereto, and attached to the original signed copy of the contract.
11. **DEBARMENT:** The Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract), by any governmental department or agency. If the Contractor cannot certify this statement, attach a written explanation for review by the State. The Contractor must notify the State Director of Purchasing within 30 days if debarred by any governmental entity during the Contract period.
12. **TERMINATION:** Unless otherwise stated in the Special Terms and Conditions, this contract may be terminated, with cause by either party, in advance of the specified termination date, upon written notice being given by the other party. The party in violation will be given ten (10) working days after notification to correct and cease the violations, after which the contract may be terminated for cause. This contract may be terminated without cause, in advance of the specified expiration date, by either party, upon 90 days prior written notice being given the other party. On termination of this contract, all accounts and payments will be processed according to the financial arrangements set forth herein for approved services rendered to date of termination.
13. **NON APPROPRIATION OF FUNDS:** The Contractor acknowledges that the State cannot contract for the payment of funds not yet appropriated by the Utah State Legislature. If funding to the State is reduced due to an order by the Legislature or the Governor, or is required by State law, or if federal funding (when applicable) is not provided, the State may terminate this contract or proportionately reduce the services and purchase obligations and the amount due from the State upon 30 days written notice. In the case that funds are not appropriated or are reduced, the State will reimburse Contractor for products delivered or services performed through the date of cancellation or reduction, and the State will not be liable for any future commitments, penalties, or liquidated damages.
14. **SALES TAX EXEMPTION:** The State of Utah's sales and use tax exemption number is E33399. The tangible personal property or services being purchased are being paid from State funds and used in the exercise of that entity's essential functions. If the items being purchased are construction materials, they will be converted into real property by employees of this government entity, unless otherwise stated in the contract.

15. **WARRANTY:** The contractor agrees to warrant and assume responsibility for all products (including hardware, firmware, and/or software products) that it licenses, contracts, or sells to the State of Utah under this contract for a period of one year, unless otherwise specified and mutually agreed upon elsewhere in this contract. The contractor (seller) acknowledges that all warranties granted to the buyer by the Uniform Commercial Code of the State of Utah apply to this contract. Product liability disclaimers and/or warranty disclaimers from the seller are not applicable to this contract unless otherwise specified and mutually agreed upon elsewhere in this contract. In general, the contractor warrants that: (1) the product will do what the salesperson said it would do, (2) the product will live up to all specific claims that the manufacturer makes in their advertisements, (3) the product will be suitable for the ordinary purposes for which such product is used, (4) the product will be suitable for any special purposes that the State has relied on the contractor's skill or judgment to consider when it advised the State about the product, (5) the product has been properly designed and manufactured, and (6) the product is free of significant defects or unusual problems about which the State has not been warned. Remedies available to the State include the following: The contractor will repair or replace (at no charge to the State) the product whose nonconformance is discovered and made known to the contractor in writing. If the repaired and/or replaced product proves to be inadequate, or fails of its essential purpose, the contractor will refund the full amount of any payments that have been made. Nothing in this warranty will be construed to limit any rights or remedies the State of Utah may otherwise have under this contract.
16. **PUBLIC INFORMATION:** Contractor agrees that the contract will be a public document, and may be available for distribution. Contractor gives the State express permission to make copies of the contract and/or of the response to the solicitation in accordance with the State of Utah Government Records Access and Management Act. The permission to make copies as noted will take precedence over any statements of confidentiality, proprietary information, copyright information, or similar notation.
17. **DELIVERY:** Unless otherwise specified in this contract, all deliveries will be F.O.B. destination with all transportation and handling charges paid by the Contractor. Responsibility and liability for loss or damage will remain with Contractor until final inspection and acceptance when responsibility will pass to the State except as to latent defects, fraud and Contractor's warranty obligations.
18. **ORDERING AND INVOICING:** All orders will be shipped promptly in accordance with the delivery schedule. The Contractor will promptly submit invoices (within 30 days of shipment or delivery of services) to the State. The State contract number and/or the agency purchase order number shall be listed on all invoices, freight tickets, and correspondence relating to the contract order. The prices paid by the State will be those prices listed in the contract. The State has the right to adjust or return any invoice reflecting incorrect pricing.
19. **PAYMENT:** Payments are normally made within 30 days following the date the order is delivered or the date a correct invoice is received, whichever is later. All payments to the Contractor will be remitted by mail unless paid by the State of Utah's Purchasing Card (major credit card).
20. **PATENTS, COPYRIGHTS, ETC.:** The Contractor will release, indemnify and hold the State, its officers, agents and employees harmless from liability of any kind or nature, including the Contractor's use of any copyrighted or un-copyrighted composition, secret process, patented or un-patented invention, article or appliance furnished or used in the performance of this contract.
21. **ASSIGNMENT/SUBCONTRACT:** Contractor will not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this contract, in whole or in part, without the prior written approval of the State.
22. **DEFAULT AND REMEDIES:** Any of the following events will constitute cause for the State to declare Contractor in default of the contract: 1. Nonperformance of contractual requirements; 2. A material breach of any term or condition of this contract. The State will issue a written notice of default providing a ten (10) day period in which Contractor will have an opportunity to cure. Time allowed for cure will not diminish or eliminate Contractor's liability for damages. If the default remains, after Contractor has been provided the opportunity to cure, the State may do one or more of the following: 1. Exercise any remedy provided by law; 2. Terminate this contract and any related contracts or portions thereof; 3. Impose liquidated damages, if liquidated damages are listed in the contract; 4. Suspend Contractor from receiving future solicitations.
23. **FORCE MAJEURE:** Neither party to this contract will be held responsible for delay or default caused by fire, riot, acts of God and/or war which is beyond that party's reasonable control. The State may terminate this contract after determining such delay or default will reasonably prevent successful performance of the contract.
24. **PROCUREMENT ETHICS:** The Contractor understands that a person who is interested in any way in the sale of any supplies, services, construction, or insurance to the State of Utah is violating the law if the person gives or offers to give any compensation, gratuity, contribution, loan or reward, or any promise thereof to any person acting as a procurement officer on behalf of the State, or who in any official capacity participates in the procurement of such supplies, services, construction, or insurance, whether it is given for their own use or for the use or benefit of any other person or organization (63-56-1002, Utah Code Annotated, 1953, as amended).
25. **CONFLICT OF TERMS:** Contractor Terms and Conditions that apply must be in writing and attached to the contract. No other Terms and Conditions will apply to this contract including terms listed or referenced on a Contractor's website, terms listed in a Contractor quotation/sales order, etc. In the event of any conflict in the contract terms and conditions, the order of precedence shall be: 1. State Standard Terms and Conditions; 2. State Additional Terms and Conditions; 3. Contractor Terms and Conditions.

(Revision date: July 5, 2005)

Attachment B

Scope of work and Pricing

The purpose of this contract to perform and complete work on the ePM STIP and Program Management Module, using Oracle application and development tools. The Program Management module of ePM will be upgraded and enhanced to more accurately model UDOT's current business practices, including the electronic generation of the State Transportation Improvement Plan (STIP). Additionally, modifications will be done on the existing database, forms, and reports to address these business changes.

BACKGROUND

ePM

The UDOT electronic Program Management (ePM) system is a multiple-function Oracle database system. The Program Development module provides preconstruction project information including: cost estimate, fund setup (source, obligation, description and type), fund apportionment and obligation, construction estimate, commission approved amount and detailed expenditure summaries. Other modules within ePM provide preconstruction project scheduling, management unit work schedules, project cost tracking, personnel timesheets, and process analysis and evaluation, as well as many other functions.

STIP

Generating the State Transportation Improvement Plan (STIP) within ePM is one of the main components of the work to be performed under this contract. At any given time there is an Approved STIP and a Draft STIP. The Approved STIP is the current working version of the STIP. The Draft STIP is continually being developed for the next approval cycle. Amendments and other changes can be proposed for either version of the STIP at any time. Amendments must be developed to reflect the proposed changes without altering the current document, pending approval, at which time the current version needs to be updated to reflect the approved Amendment. There may be multiple Amendments under consideration at any given time. A complete history of all actions on the STIP must be retained and remain accessible.

FMIS

The Fiscal Management Information System (FMIS) is the Federal Highway Administration's (FHWA) major Financial Information System. It contains data related to all highway projects financed with Federal Aid Highway Funds and other highway related projects. FHWA uses this information for planning and executing program activities, evaluating program performance, and depicting financial trends and requirements relating to current and future funding.

FMIS is a server-based system, using Oracle as the database software and resides on a NT server in Washington, D.C. This system is web-enabled and can be accessed using TCP/IP with a standard web browser(s) like Netscape or Internet Explorer.

Most of the project data collected in FMIS originates in State systems. To ensure that correct, up-to-date information is received and processed by FHWA and to prevent data being re-keyed, States can electronically send FMIS project data to FHWA or key data directly into FMIS. This process is called Electronic Data Sharing (EDS). Once in the FMIS database, States and FHWA divisions can review, update and electronically sign for the authorizations and modifications of project data. States that have received FHWA approval can also transmit the signature electronically. Data that has been processed and approved in FMIS can also be electronically returned to the State.

SCOPE OF WORK

- 1) General
 - a) Enhancement modifications to the Program and Project Management modules of ePM will require offeror to:
 - i) Determine efficient work plan
 - ii) Perform business and data analysis to determine database structure
 - iii) Work with UDOT Project Manager to determine look and feel of final product
 - iv) Standardize business rules throughout the module [see vii) and viii)]
 - v) Work with UDOT PM to determine what new forms and reports will be needed
 - vi) Work with UDOT PM to determine what existing forms and reports will need to be modified
 - vii) Maximize use of existing stored functions, procedures and packages
 - viii) Develop new functions, procedures and packages as needed
- 2) State Transportation Improvement Plan (STIP) (Substantial completion by July 2006)
 - a) Modify ePM to:
 - i) Create STIP from start to finish
 - ii) Separate project numbers into parts and upload parts into FMIS
 - iii) Create electronic copy of Draft STIP
 - iv) Create electronic copy of Final STIP
 - v) Input, track and process STIP amendments
 - vi) Produce STIP related reports without logging in to ePM by running a nightly report and uploading it to the web
 - vii) Produce the map portion of the STIP using Oracle Spatial
 - b) Changes to database, tables, forms, reports, and all other parts of the ePM system that may be affected by incorporating the ability to generate the STIP electronically
 - i) Create or modify existing tables
 - ii) Create or modify existing forms and reports
 - iii) Develop new forms and reports which may include:
 - (1) Funding Source report
 - (2) New Projects on STIP report
 - (3) Over/Under funded projects report
 - iv) Create a Scenario Generator to facilitate analysis of project funding priority
- 3) Request for Federal Aid Project Approval, Authorization and/or Agreement (R709 form)
 - a) Create electronic version of form R709 within ePM. Functionality will be built in to address the following project funding situations:
 - i) Initial Setup
 - ii) Advertisement
 - iii) Construction Change Orders
 - iv) Adjustment to Award
 - v) Funding Modifications
 - vi) Project Closeout
 - vii) Transaction Report
 - b) Changes to database, tables, forms, reports, and all other parts of the ePM system that may be affected by incorporating the ability to generate form R709 electronically
 - i) Create or modify existing tables
 - ii) Create or modify existing forms and reports
 - iii) Develop new forms to handle project funding information
 - iv) Develop other forms and reports as directed by Project Manager
 - v) Create a Funding Tab
- 4) Fiscal Management Information System (FMIS) interface with ePM (Substantial completion by January 2007)
 - a) Design and build FMIS interface with ePM following FHWA guidelines and specifications.

This interface will allow for electronic data sharing between the FMIS and ePM systems

- 5) UDOT Project Development personnel will assist with testing and quality control of the work performed
- 6) UDOT Project Development personnel will provide project oversight including, assignments, direction, written specifications, response to questions, etc.
- 7) Contract will work on site. Work to be performed is estimated to take one programmer 18 months to complete.
- 8) UDOT utilizes the right for complete evaluation and review before final acceptance. There will be 15% holdback on work completed until final acceptance. The project will be divided into manageable tasks and milestones to ease billing and retention. Upon completion of all tasks, there will be a 90-day test period of all new work before final acceptance of that task.
- 9) Pricing: Team members hourly rates for this project are:

Scott Lindgren - Team Lead's : Hourly rate \$84.50
Shawn Shanley - Team Member's: Hourly rate \$82.00

ATTACHMENT C

SPECIAL TERMS AND CONDITIONS

1. **Payment Schedule:** Payments to the Contractor shall be made monthly after the submission of a proper invoice.
 2. **Contract:** This is a 2 year contract, with a (fully loaded) price per individuals, with a possible renewal option of 1 year.
 3. **Wages:** The Contractor shall be responsible for all applicable company wages in accordance with the Federal, State and local laws and ordinances.
 4. **Invoicing:** The Contractor shall submit invoices for authorization to pay to:
Utah Department of Transportation
Attention : Daniel Avila
Box 148425
4501 South 2700 West
Salt Lake City, Utah 84114-8425

Payment of invoices will be sent via mail. The State reserves the right to correct invoices.
- THE CONTRACT NUMBER SHALL APPEAR ON ALL INVOICES FOR PAYMENTS**
5. **PROGRESS PAYMENTS:** Progress payments will be made, with 15% of the invoiced amount retained as a performance guarantee when indicated, based upon the State financial cycle.
 6. **FINAL PAYMENT:** Final payment, including any amounts retained, shall be made 60 days after final sign off for each task and deliverable, such as file translation, custom computer programming or project records, and system test materials and documentation have been received and accepted by the STATE Project Manager as accurate and complete.
 7. **Non-Assignment:** The Contractor shall not sublet, assign or transfer any part of this contract without prior written approval from the Procurement Supervisor or the Procurement Manager of Utah Department of Transportation. The provision of monies due under this contract shall not be assignable without prior written approval from the Procurement Supervisor or the Procurement Manager of the Utah Department of Transportation.
 8. **Complete Contract:** This contract is intended by the parties as a final expression of their agreement, and supersedes all prior communications, representations and agreement, oral and written, between the parties with respect to the subject matter contained herein. The parties also intend this contract to be a complete and exclusive statement of the terms of their agreement. This contract may not be modified or terminated orally, and no claimed modification, rescission or waiver shall be binding on the STATE unless in writing, signed by a duly authorized representative of the STATE.
 9. **Price Guarantees:** The CONTRACTOR agrees the prices bid on services in this contract shall be guaranteed through completion of the project.
 10. **Notification:** Notice given under this Contract shall be written, or sent by facsimile or

other electronic means. Written notice shall be sent by registered or certified mail, postage prepaid, return receipt requested, or by any other overnight delivery service which delivers to the noticed destination and provides proof of delivery to the sender. Facsimile or other electronic notice must be followed within 3 days by written notice. All notices shall be effective when first received at the following addresses:

If to CONTRACTOR:

SL Systems Technology
Attention: Scott B. Lindgren
11540 Wyndcastle Drive
Sandy, UT 84092-7113

If to STATE:

Utah Department of Transportation
Attention: Daniel Avila
Box 148425
4501 South 2700 West
Salt Lake City, UT 84114-8425
davila@utah.gov
Fax 801-965-4564

also copies to:

Utah Department of Transportation
Attention: Denice McCarthy
4501 South 2700 West
Dmccarthy@utah.gov
Fax 801-965-4073

11. **Change in Personnel or Resources:** No change in personnel or resources assigned to this project will be permitted without prior written approval of STATE Project Manager.
12. **Responsibility for Wages:** The CONTRACTOR is responsible for all applicable company wages in accordance with the federal, state and local laws and ordinances.
13. **Employment of State Employees:** The CONTRACTOR agrees to not engage in any way the services on this contract of any present or former STATE employee who was involved as a decision maker in the selection or approval process or who negotiated and/or approved billings or contract modification for this contract.
14. **Non-Compete Agreements:** The CONTRACTOR represents that its officers and employees are free to contract with the STATE and are not subject to restrictions by the terms of their present or past employment including, but not limited to, an agreement not to compete for a period of time, unless disclosure has been made. CONTRACTOR must disclose to the STATE any possible conflicts, in writing, before the contract is signed, and the STATE will evaluate whether to continue with contract execution. The STATE may elect to terminate a contract immediately with CONTRACTOR who is subsequently determined to be subject to such restrictions, without liability to the STATE. If the STATE elects to terminate the contract for this reason, the STATE will supersede paragraph #12 in Attachment A - Standard Terms and Conditions, and will not provide 30 days prior notice to the CONTRACTOR.
15. **Confidential Information:** To the extent required under this contract the CONTRACTOR may be given access to confidential or proprietary business, technical, or financial information belonging to the STATE. The CONTRACTOR shall, after receipt thereof, treat such information as confidential. Both parties shall maintain, as confidential, and shall not disclose to any person outside its employ, nor use for purposes other than performance of this Contract, any specifications, drawings, blueprints, data, business information, or other confidential information which is learned by virtue of this Contract, except where required by law. CONTRACTOR agrees not to appropriate such

information to their own use or disclose such information to other parties unless specifically authorized by the STATE in writing. The foregoing obligations, however, shall not apply to:

- a) Information, which, at the time of receipt by the CONTRACTOR, is in public domain.
- b) Information, which is published after receipt by the CONTRACTOR, or otherwise becomes part of the public domain through no fault of the CONTRACTOR.
- c) Information which the CONTRACTOR can demonstrate was already in its possession at the time of receipt, and was not acquired directly or indirectly from the STATE.
- d) Information which the CONTRACTOR can demonstrate was received from a third party who did not require the CONTRACTOR to hold such information in confidence.

16. **Quality of Services:** CONTRACTOR represents to STATE that it is experienced in and thoroughly familiar with all aspects of the services required hereunder and is properly qualified as applicable and is equipped, organized, and financially able to perform the services.

No changes in the services to be provided by CONTRACTOR under this Contract shall be made without STATE prior written approval.

17. **Project Reviews:** It is understood and agreed authorized representatives of STATE and, when federal Funds are used, the Federal Highway Administration, shall have the right to review and inspect the work in process, and the CONTRACTOR facilities, at any time during normal business hours or by appointment.
18. **Similar Products:** Should the STATE independently design, develop, or acquire ideas and concepts identical or similar to those provided by or contained in the CONTRACTOR product, CONTRACTOR agrees this Contract shall not prevent STATE from using such ideas or concepts to design, develop, or acquire hardware or software for its use, provided STATE does not copy the CONTRACTOR product.
19. **Facilities and Materials:** The CONTRACTOR and all personnel working under this contract shall not acquire, borrow, copy, or use in any manner software, documentation, or data on any STATE data processing facility for use other than as required to complete this contract.
20. **Suspension of Work:** Should the STATE desire to suspend the work, but not terminate the contract, this will be done by written confirmation. The work may be reinstated upon 2 weeks advance written notice from the STATE. The STATE understands any such suspension of the work may affect both the time of performance and price to complete the work when reinstated.
21. **Assignment of Contract:** The CONTRACTOR shall not sublet, assign or transfer any part of this contract without prior written approval from STATE. Neither shall the provision of monies due under this contract be assignable without prior written approval of STATE.
22. **Failure to Complete:** At any time the CONTRACTOR determines the contract work cannot be completed within the specified time or budget, the CONTRACTOR must notify STATE in writing, immediately. The STATE may, at its sole discretion, extend the contract by written modification.
23. **Non-Performance:** If, at any time, CONTRACTOR fails to demonstrate the required

expertise (as represented in the CONTRACTOR proposal) or fails to meet acceptable standards of performance, the STATE reserves the right to require the CONTRACTOR to replace individual(s) with a competent individual(s). The STATE Project Manager must approve this replacement. If the CONTRACTOR fails to accomplish project objectives or meet schedule commitments established in meetings with the STATE Project Manager, this contract may be canceled immediately. If the STATE elects to terminate the contract for this reason, the STATE will supersede paragraph #12 in Attachment A - Standard Terms and Conditions, and will not provide 30 days prior notice to the CONTRACTOR.

24. **Termination:** The occurrence of any of the following constitutes a breach by CONTRACTOR unless corrected by CONTRACTOR within 2 weeks:

CONTRACTOR failure to perform services and/or deliver product on time.

Services performed and/or product delivered by CONTRACTOR does not conform to the terms set forth in this Contract.

CONTRACTOR fails to perform any material provision of this Contract.

CONTRACTOR assigns this Contract, or any obligation or rights hereunder. (The term "assigns" to include, without limitation, a transfer of majority.)

CONTRACTOR sells or merges with a third-party (not a parent or subsidiary company) without the prior written consent of STATE.

CONTRACTOR becomes insolvent or makes an assignment for the benefit of creditors, or a receiver, or similar officer is appointed to take charge of all or part of CONTRACTOR assets.

CONTRACTOR shall cure any of the above breaches and notify STATE of such cure within 2 weeks from receipt of a notice to cure from STATE. If CONTRACTOR fails to cure, STATE may terminate this Contract by giving CONTRACTOR written notice. STATE shall have no liability to CONTRACTOR thereafter except for payment of any balance due for conforming services performed prior to the date of STATE notice to cure. STATE may, at its option and without regard to CONTRACTOR ability to cure, terminate this Contract for cause in the event of any second or subsequent instances of the above breaches by CONTRACTOR

25. **Termination for Other Than Non-Performance:** If the STATE terminates for reasons other than non-performance, the CONTRACTOR is relieved of any performance responsibilities on the project, and the withheld performance guarantee amount will be released by the STATE. The estimated completion of projects may overlap in new fiscal years. (STATE fiscal year is from July 1, to June 30). If funding is not allocated for individual projects, which overlap into the new fiscal year, the project will be automatically terminated on June 30th without written notice to contract.

26. **Forum for Enforcement:** Any controversy or claim arising out of, in connection with, or relating to this Contract or a breach thereof shall be settled by arbitration under the arbitration rules of the American Arbitration Association, Utah Board. The Statutes of the State of Utah shall govern the arbitration proceeding and the proceeding shall be held in Salt Lake City, Utah. Anything to the contrary contained in the above mentioned rules and statutes notwithstanding, the parties consent that any papers, notices, or process necessary or proper for the institution or continuance of, or relating to any arbitration proceeding, or for the confirmation of an award and entry of judgment on any award made, including appeals in connection with any judgment or award, may be served on each of the parties by registered mail addressed to the party at the principal office of the

party or by personal service on the party in or without the above mentioned state. The parties hereby recognize and consent to the above mentioned arbitration association's jurisdiction over each and every one of them.

27. **Disputes:** Any dispute arising under this Contract, which is not resolved, by the STATE and CONTRACTOR shall be decided by a court of law under the terms of Section 27. Forum for Enforcement. Pending settlement of the final decision by the court, CONTRACTOR shall proceed diligently with the performance of the Contract in accordance with STATE direction.